

(2)  
No. 85-1736

Supreme Court, U.S.

FILED

JUL 31 1986

JOSEPH E. SPANIOLO, JR.  
CLERK

In The  
**Supreme Court of the United States**  
October Term, 1985

JERSEY SHORE STATE BANK,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

On Writ of Certiorari to the United States  
Court of Appeals for the Third Circuit

**JOINT APPENDIX**

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**PETITION FOR CERTIORARI FILED APRIL 22, 1986**  
**CERTIORARI GRANTED JUNE 2, 1986**

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# TABLE OF CONTENTS

	Page
Docket Entries—United States Court of Appeals for the Third Circuit, Docket No. 85- 5263 .....	1
Docket Entries—United States District Court for the Middle District of Pennsylvania Docket No. 83-1879 .....	3
Complaint of plaintiff United States of America*	
Answer of defendant Jersey Shore State Bank*	
Affidavit of John T. Repsher, Internal Revenue Offi- cer, dated October 25, 1984 .....	5
Motion for Summary Judgment of defendant Jersey Shore State Bank with annexed Statement of Ma- terial Facts as to which the defendant contends there is no genuine issue to be tried .....	8
Affidavit of James P. Stopper, Certified Public Ac- countant, dated November 9, 1984 .....	12
Order of United States District Court for the Middle District of Pennsylvania entered March 20, 1985*	
Judgment of United States District Court for the Middle District of Pennsylvania entered March 20, 1985*	
Opinion of United States Court of Appeals for the Third Circuit entered January 10, 1986*	
Judgment of United States Court of Appeals for the Third Circuit entered January 10, 1986 .....	16
Order of United States Court of Appeals for the Third Circuit denying Petition for Panel Rehearing and Rehearing in banc entered February 4, 1986*	

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(\*This item is printed in an appendix to the petition for a writ of certiorari and has not been reproduced here.)

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

No. 85-5263

UNITED STATES OF AMERICA,

Appellant

v.

JERSEY SHORE STATE BANK,

Appellee

(D.C. Civil No. 83-1879)

RELEVANT DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
1985	
April 12	Appeal of the plaintiff United States from the Order and Judgment entered March 20, 1985 by the District Court
Nov. 5	Oral argument before panel consisting of Seitz, Rosenn and Weis, Circuit Judges
1986	
Jan. 10	Opinion of panel per Seitz, C. J. reversing judgment of the District Court and remanding; Weis, C. J. dissenting
Jan. 10	Judgment against appellee Jersey Shore State Bank in favor of appellant United States reversing and remanding case to the District Court for further proceedings with costs taxed against appellee
Jan. 23	Petition for panel rehearing and rehearing in banc filed by appellee Jersey Shore State Bank

Feb. 4 Order of Court per Seitz, C. J. denying Petition  
for rehearing by panel and rehearing in banc

March 7 Order of Court per Seitz, C. J. further staying  
the issuance of the mandate to and including  
April 25, 1986 to allow for filing of Petition for  
Writ of Certiorari to the United States Su-  
preme Court

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UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 83-1879

UNITED STATES OF AMERICA,  
Plaintiff

v.

JERSEY SHORE STATE BANK,  
Defendant

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1983	
Dec. 30	Complaint filed by plaintiff United States against defendant Jersey Shore State Bank
1984	
Feb. 17	Answer to complaint filed by Jersey Shore State Bank
Oct. 30	Motion for Summary Judgment filed by plain- tiff United States
Oct. 30	Affidavit of John T. Repsher, Internal Revenue Agent filed by plaintiff United States
Oct. 31	Motion for Summary Judgment filed by de- fendant Jersey Shore State Bank with annexed Statement of Material Facts as to which the de- fendant contends there is no genuine issue to be tried
1985	
March 20	Order of United States District Court denying Motion for Summary Judgment of plaintiff United States, granting Motion for Summary

Judgment of defendant Jersey Shore State Bank and directing Clerk to enter judgment in favor of defendant Jersey Shore State Bank and to close file

March 20 Judgment of United States District Court entered by Clerk in favor of defendant Jersey Shore State Bank

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IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil Action No. 83-1879

UNITED STATES OF AMERICA

Plaintiff,

v.

JERSEY SHORE STATE BANK,

Defendant.

AFFIDAVIT OF JOHN T. REPSHER

JOHN T. REPSHER, being first duly sworn, states as follows:

1. I am a duly commissioned Internal Revenue Officer, employed by the District Director of Internal Revenue, Pittsburgh District, with my post of duty at Altoona, Pennsylvania.

2. One of my duties as an Internal Revenue Officer is to collect taxes which have been assessed against taxpayers, and to determine what sources, if any, are available for the collection of unpaid tax liabilities.

3. I have been assigned to collect the assessed but unpaid employment tax liabilities for the quarters ended December 31, 1977, March 31, 1978, June 30, 1978, September 30, 1978, December 31, 1978, March 31, 1979, June 30, 1979, September 30, 1979, December 31, 1979, December 31, 1979, and March 31, 1980, of Pennmount Industries, Inc. (Pennmount), Lock Haven, Pennsylvania 17745.



4. During the fourth quarter of 1977 through the first quarter of 1980, Pennmount failed to pay over to the United States of America federal income, and Federal Insurance Contribution Act ("FICA") taxes required to be withheld from the wages of Pennmount employees.

5. A delegate of the Secretary of the Treasury made assessments against Pennmount and gave notice and demand according to law for federal income taxes and FICA taxes required to be withheld and deducted from the wages of Pennmount employees for the quarters described in paragraph 3, above, as well as quarters not at issue in this lawsuit.

6. Attached hereto as Exhibit A is a true and accurate summary of the unpaid assessed liabilities of Pennmount, for employment taxes (withholding taxes and employee's share of FICA taxes), which Pennmount was required to withhold from the wages of its employees, for the calendar quarters listed in paragraph 3, above. Exhibit A lists withheld income tax, withheld FICA tax, and interest through June 30, 1981. Interest continues to run on the unpaid balance at the rate prescribed in Section 6621 of the Internal Revenue Code of 1954, compounded daily, from the date the payment was due, until the date the tax is paid.

7. No part of the taxes and interest listed in Exhibit A has been paid.

8. Jersey Shore State Bank has not paid any of the withholding taxes assessed against Pennmount for the quarters listed in paragraph 3 above.

/s/ John T. Repsher  
Internal Revenue Officer  
Internal Revenue Service  
Altoona, Pennsylvania

Subscribed and sworn to before me this 25th day of October, 1984.

/s/ Denise L. Mishock  
Notary Public

My commission expires: January 26, 1987.

#### EXHIBIT A—AFFIDAVIT OF JOHN T. REPSHER

Quarter Ended	FICA (Employee's Share)	Withholding Tax	Interest (Through 6/30/81)	Total
Dec. 31, 1977	\$ 1,840.49	\$ 2,926.20	\$ 1,380.32	\$ 6,147.01
Mar. 31, 1978	5,899.84	8,503.70	3,954.86	18,358.40
June 30, 1978	4,030.17	6,457.20	2,722.36	13,209.73
Sep. 30, 1978	3,265.51	5,763.40	2,208.25	11,237.16
Dec. 31, 1978	3,345.09	6,889.10	2,349.51	12,583.70
Mar. 31, 1979	1,431.74	2,505.20	844.77	4,781.71
June 30, 1979	691.57	1,348.50	407.14	2,447.21
Sep. 30, 1979	809.43	1,459.07	418.51	2,687.01
Dec. 31, 1979	650.96	1,217.20	426.53	2,294.69
Mar. 31, 1980	872.74	1,584.30	343.91	2,800.95
<b>TOTAL</b>	<b>\$22,837.54</b>	<b>\$38,653.87</b>	<b>\$15,056.16</b>	<b>\$76,547.57</b>

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CIVIL NO. 83-1879  
Complaint Filed 12/30/83  
(Judge Muir)

UNITED STATES OF AMERICA,  
  
Plaintiff  
  
vs.

JERSEY SHORE STATE BANK,  
  
Defendant

MOTION FOR SUMMARY JUDGMENT

The defendant, Jersey Shore State Bank, by its counsel, Martin A. Flayhart, Esquire, moves the Court as follows:

1. That the Court enter, pursuant to Fed. R. Civ. P. 56, summary judgment in favor of the defendant, Jersey Shore State Bank, and against the plaintiff, United States of America, on Counts I and II of the plaintiff's Complaint on the ground that there is no genuine issue as to any material fact as set forth below and that the defendant is entitled to judgment as a matter of law.

2. This Motion is based upon the following:

(a) Those uncontroverted allegations in the plaintiff's Complaint which are admitted in the defendant's Answer.

(b) The answers of the plaintiff to Interrogatories 1B, 1C, and 2 of the defendant's First Set of Interrogatories. These responses indicate that no notice was given by the plaintiff to the defendant within sixty

(60) days of the date of the notice of filing or assessment by the plaintiff against Pennmount Industries, Inc. for any lien assessments which had been filed by the plaintiff against Pennmount Industries, Inc. Copies of the plaintiff's answers to the defendant's First Set of Interrogatories are attached hereto as defendant's Exhibit 1 and made a part of this Motion.

(c) The affidavit of Theodore H. Reich, President of Jersey Shore State Bank, attached hereto as defendant's Exhibit 2 indicating that no notice was given by the plaintiff to the defendant within sixty (60) days of the date of the notice of filing or assessment by the plaintiff against Pennmount Industries, Inc. for any lien assessments which have been filed by the plaintiff against Pennmount Industries, Inc.

3. The failure of the plaintiff to provide the defendant with the required notice of filing or assessment of lien assessments against Pennmount Industries, Inc. was in contravention of the statutory duty placed upon the plaintiff pursuant to 26 USC Section 6303(a), thereby entitling the defendant to summary judgment against the plaintiff.

WHEREFORE, the defendant requests the Court to enter summary judgment in favor of the defendant and against the plaintiff on Count I and Count II of the plaintiff's complaint.

/s/ By: Martin A. Flayhart  
Attorney for Defendant  
P.O. Box 526  
128 South Main Street  
Jersey Shore, PA 17740  
(717) 398-4510

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CIVIL NO. 83-1879  
Complaint Filed 12/30/83  
(Judge Muir)

UNITED STATES OF AMERICA,  
Plaintiff  
vs.

JERSEY SHORE STATE BANK,  
Defendant

*STATEMENT OF MATERIAL FACTS AS TO  
WHICH THE DEFENDANT CONTENDS  
THERE IS NO GENUINE ISSUE TO BE TRIED*

Pursuant to Rule 401.4 of the Rules of Court for the United States District Court for the Middle District of Pennsylvania, the defendant, Jersey Shore State Bank, submits the following statement of material facts in support of its Motion for Summary Judgment as to which the defendant contends there is no genuine issue to be tried:

1. The defendant is a bank which provided money as a commercial loan to Pennmount Industries, Inc., a corporation engaged in the manufacture of wooden tables and chairs.

2. No notice was given by the plaintiff to the defendant within sixty (60) days of the date of the notice of filing or assessment by the plaintiff against Pennmount Indus-

tries, Inc. for any lien assessments which had been filed by the plaintiff against Pennmount Industries, Inc.

/s/ Martin A. Flayhart  
Attorney for Defendant  
P.O. Box 526  
128 South Main Street  
Jersey Shore, PA 17740  
(717) 398-4510

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UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CIVIL NO. 83-1879  
Complaint Filed 12/30/83  
(Judge Muir)

UNITED STATES OF AMERICA,  
Plaintiff  
vs.

JERSEY SHORE STATE BANK,  
Defendant

AFFIDAVIT OF JAMES P. STOPPER,  
CERTIFIED PUBLIC ACCOUNTANT

COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF LYCOMING : SS:  
:

James P. Stopper, being duly sworn according to law,  
deposes and says as follows:

1. The affiant is a certified public accountant and member of the firm of Rogers, Huber and Associates, with offices at 454 Pine Street, Williamsport, Pennsylvania.

2. The affiant has examined the records for the period of October 1, 1977 through March 31, 1979, of the regular checking account of Pennmount Industries, Inc., Account No. 147-850 maintained with Jersey Shore State Bank.

3. The affiant further states that he has examined the records for the period of October 26, 1978 through March 31, 1980, of the special checking account of Pennmount Industries, Inc., Account No. 166-308 maintained with Jersey Shore State Bank.

4. Based upon the examinations of the regular checking Account No. 147-850 of Pennmount Industries, Inc. the affiant states that for the period of October 1977 through November 1978 that deposits into the account by Pennmount Industries, Inc. from sources other than loans by Jersey Shore State Bank, with the exception of May 1978, were in excess of the net payroll paid by Pennmount Industries, Inc. to its employees.

5. The affiant further states that the total deposits by Pennmount Industries, Inc. into the regular checking Account No. 147-850 for the period from October 1, 1977 through the end of November 1978, from sources other than bank loans from Jersey Shore State Bank was in a total amount of \$409,867.66, as opposed to the net payroll for the same period for employees of Pennmount Industries, Inc. of \$265,230.91, see attached Exhibit A.

6. The affiant states that with regard to the special Account No. 166-308 of Pennmount Industries, Inc. with Jersey Shore State Bank, that for the period from October 26, 1978 through January 1979, that the total deposits by Pennmount Industries, Inc. from sources other than loans from Jersey Shore State Bank was in excess of the net payroll paid by Pennmount Industries, Inc. to its employees. The deposits from sources other than bank loans was in the amount of \$100,427.94, as opposed to a total net payroll for Pennmount employees of \$43,031.63. See attached Exhibit B.

7. The affiant has attached hereto as Exhibit A, a summary of the deposits made by Pennmount Industries, Inc. from sources other than bank loans for the period of October 1, 1977 through November 1978, along with the corre-

sponding amounts paid for net payroll by Pennmount Industries, Inc. to its employees for the corresponding period.

8. The affiant has attached hereto as Exhibit B a summary of the special account No. 160-308 of Pennmount Industries, Inc. with Jersey Shore State Bank showing the amounts deposited from October 26, 1980 through January 1979, by Pennmount Industries, Inc. apart from any loans from Jersey Shore State Bank along with the corresponding net payroll paid by Pennmount Industries, Inc. to its employees.

IN WITNESS WHEREOF, James P. Stopper has hereunto set his hand and seal certifying to the truth and correctness of the above statements.

/s/ James P. Stopper

Sworn to and subscribed before me  
this 9th day of November, 1984.

Notary Public  
(Notary Stamp)

Exhibit A

Regular Account No. 147-850

Month	Deposits by Pennmount from Sources Other than Loans from Jersey Shore State Bank	Payroll Check
October, 1977	\$42,883.99	\$26,008.03
November, 1977	51,477.60	26,146.39
December, 1977	32,414.54	27,409.03
January, 1978	62,662.60	26,076.01
February, 1978	26,485.35	21,329.31
March, 1978	33,524.61	32,156.25

April, 1978	16,042.93	12,564.39
May, 1978	23,417.48	32,490.36
June, 1978	15,354.48	9,648.91
July, 1978	25,454.50	10,795.11
August, 1978	24,385.24	12,544.65
September, 1978	19,537.46	14,880.54
October, 1978	33,369.92	13,181.93
November, 1978	2,856.96	
Total:	\$409,867.66	\$265,230.91

Exhibit B

Special Account No. 166-308

Month	Deposits by Pennmount from Sources Other than Loans from Jersey Shore State Bank	Payroll Check
October—		
November, 1978	\$54,709.03	\$21,802.78
December, 1978	31,162.42	16,425.41
January, 1979	14,556.49	4,803.44
Total:	\$100,427.94	\$43,031.63

(Filed as an attachment to the Brief of Defendant Opposing the Plaintiff's Motion for Summary Judgment. The aforesaid brief and remaining exhibits have been omitted in printing.)

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

No. 85-5263

UNITED STATES OF AMERICA, Appellant

vs.

JERSEY SHORE STATE BANK, Appellee  
(D. C. Civil No. 83-1879)

ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE MIDDLE  
DISTRICT OF PENNSYLVANIA

Present: SEITZ, WEIS, and ROSENN, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Middle District of Pennsylvania and was argued by counsel November 5, 1985.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, entered March 20, 1985, be, and the same is hereby reversed and the cause remanded to the said District Court for further proceedings consistent with the opinion of this Court. Costs taxed against the appellee.

ATTEST:

/s/ Sally Mrvos  
Clerk

January 10, 1986